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8
9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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12 UNITED STATES OF AMERICA,) CASE NOS. 2:24-CR-00091-ODW
13)
14)
15 Plaintiff,) DEFENDANT'S *EX PARTE*
16) MOTION TO AMEND JUDGMENT
17 v.) OF CONVICTION
18) (ECF NO. 216)
19 ALEXANDER SMIRNOV,)
20)
21)
22 Defendant.) Honorable Otis D. Wright II
23)
24)
25)
26)

20 COMES NOW, Defendant, ALEXANDER SMIRNOV ("Mr. Smirnov"), by
21 and through his attorneys, DAVID Z. CHESNOFF, ESQ., and RICHARD A.
22 SCHONFELD, ESQ., of the law firm of CHESNOFF & SCHONFELD, and hereby
23 moves this Honorable Court *Ex Parte* to enter an order amending the Judgment of
24 Conviction (ECF No. 216), dated Jan. 8, 2025.
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1 This *Ex Parte* Motion is made and based upon the attached Memorandum of
2 Points and Authorities.

3 The government has advised as follows in response to the present *Ex Parte*
4 Motion: "The government does not believe the J&C is unclear. However, the
5 government does not oppose amending the J&C to include the language used by the
6 court during the oral pronouncement of the sentence."
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8 Dated this 13th day of January 2025.
9

10 Respectfully Submitted:

11 CHESNOFF & SCHONFELD

12 /s/ David Z. Chesnoff

13 DAVID Z. CHESNOFF, ESQ.

14 *Pro Hac Vice*

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MEMORANDUM AND POINTS AND AUTHORITIES

On January 8, 2025, Defendant Alexander Smirnov was sentenced pursuant to his guilty plea agreement with the government. Pursuant to that agreement, Mr. Smirnov (who has been in continuous federal custody since February 22, 2024, and who was in federal custody for several days before then) pled guilty to one count of Falsification of Records in a Federal Investigation, in violation of 18 U.S.C. § 1519, and several counts of Tax Evasion, in violation of 28 U.S.C. § 7201.

In imposing a custodial sentence at the high-end of the sentencing range specified in the plea agreement, this Court stated (at pp. 51-52): “Count 2 of indictment 91, the sentence on Count 2 is 72 months. With respect to indictment 702, Count 1 of that indictment is a sentence of 60 months. Count 5 of indictment 702 is also a term of imprisonment of 60 months, concurrently with the term of 60 months on Count 1. Count 8 on indictment 702 is 12 months, and that will be consecutive to the terms imposed on Counts 1 and 5 of indictment 702. And the terms imposed on indictment 702 are to run concurrently with the terms of imprisonment imposed in 91. In the final analysis, the total term of imprisonment on both indictments, all four counts, is 72 months.”

The written judgment, on the other hand, states: “72 months on Count 2 in case CR 24-00091. This term consists of 60 months on Count 1 and Count 5 of the Indictment in case CR 24-00702, such terms to run concurrently, and 12 months on

1 Count 8 of the Indictment in Docket No. CR 24-00702, to be served consecutively
2 to Counts 1 and 5.” ECF No. 216 at 1.

3 Mr. Smirnov respectfully submits that the written order might contain an
4 inadvertent, latent ambiguity that could result in Mr. Smirnov not receiving
5 concurrent sentences and not receiving the “total term of imprisonment on both
6 indictments, all four counts” of 72 months.
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8 In fact, nowhere in the Judgment does it state that case number CR 24-00702
9 is to run concurrent to case number CR 24-00091.
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11 Mr. Smirnov respectfully submits that this Court file an Amended Judgment
12 of Conviction that replaces the written language from ECF No. 216 with the
13 following:
14

15 The sentence on Count 2 of the indictment in case number CR
16 24-00091 is 72 months.

17 With respect to the indictment in case number CR 24-00702, as
18 to Count 1, the sentence is 60 months. As to Count 5, the sentence
19 is 60 months concurrent with Count 1. As to Count 8, the
20 sentence is 12 months consecutive to the terms imposed on
Counts 1 and 5 of that Indictment.

21 The terms of imprisonment imposed in case number CR 24-
22 00702 are to run concurrently with the terms of imprisonment
23 imposed in CR 24-00091. As a result of the foregoing, the total
24 term of imprisonment on both indictments, all four counts, is 72
months.

25 Entry of an Amended Judgment containing the foregoing written language
26 will eliminate any discrepancy with the Court’s in-court pronouncement and avoid

1 any possible sentencing ambiguity. *See, e.g., Turner v. Baker*, 912 F.3d 1236, 1239
2 (9th Cir. 2019) (“A scrivener’s error occurs when there is a discrepancy between the
3 court’s oral pronouncement of the judgment and the written record of that judgment
4 in the minute order or in the abstract of judgment We reasoned that when an
5 amended judgment corrects a scrivener’s error, it does not change the underlying
6 judgment, but only the written record that erroneously reflects that judgment
7 As a result, an amended judgment correcting a scrivener’s error has no legal
8 consequences, and thus is not a new judgment.”).

9 CONCLUSION

12 For the foregoing reasons, Mr. Smirnov respectfully requests that this
13 Honorable Court grant this *Ex Parte* Motion.

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15 Respectfully submitted,

16
17 *s/ David Z. Chesnoff*

18 *s/ Richard A. Schonfeld*

19 CHESNOFF & SCHONFELD

20 Attorneys for Alexander Smirnov
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of January 2025, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the foregoing to all parties listed on the Court's Service List.

/s/ Camie Linnell
Employee of Chesnoff Schonfeld